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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,714	03/15/2002	Kevin D. MacLean	NMTC-0770	3043
30185	7590	10/05/2007	EXAMINER	
PVF -- NUMERICAL TECHNOLOGIES, INC. C/O PARK, VAUGHAN & FLEMING LLP 2820 FIFTH STREET DAVIS, CA 95618-7759			ALHIJA, SAIF A	
ART UNIT		PAPER NUMBER		
2128				
MAIL DATE		DELIVERY MODE		
10/05/2007		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action Before the Filing of an Appeal Brief</b>		Application No. <b>10/098,714</b>	Applicant(s) <b>MACLEAN ET AL.</b>
		Examiner <b>Saif A. Alhija</b>	Art Unit <b>2128</b>
<b>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</b>			
<p>THE REPLY FILED <u>04 September 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p><b>NOTICE OF APPEAL</b></p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p>			
<p><b>AMENDMENTS</b></p> <p>3. <input checked="" type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input checked="" type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: <u>1,3,5,7,9-11,13,17,19-21,23,25,27 and 29-33</u>.</p> <p>Claim(s) withdrawn from consideration: _____.</p>			
<p><b>AFFIDAVIT OR OTHER EVIDENCE</b></p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p>			
<p><b>REQUEST FOR RECONSIDERATION/OTHER</b></p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u></p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.</p> <p>13. <input type="checkbox"/> Other: _____.</p>			

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant is arguing limitations that were not previously raised, for example the limitations regarding simulation repetition that were not previously presented in the argued independent claims. The Examiner notes that MPEP Section 714.02 states "The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner 's action and [[must reply to every ground of objection and rejection in the prior Office action]]."

Further, the Examiner contended that the reference to a correction post-processor in Cobb was to illustrate that the layouts are further corrected regardless of re-calculation. The Examiner further notes that MPEP Section 7.39.01 states that "a final rejection ... is intended to [[close the prosecution of this application]]." However the Examiner responds by citing Cobb on page 5 which states "Correction post-processor 112 makes the determined corrections for each area. For each "unique" area, the simulation and correction process is performed multiple times, iteratively, referencing desired results 106, until the corrected mask layout is considered to be sufficiently pre-compensated that it is likely to yield the desired image, within a predetermined tolerance level. Correction database 114 stores the data necessary to allow two areas to be compared and determined whether they are equivalent for OPC purposes. Furthermore, correction database 114 stores the data necessary to allow the corrections determined for one area to be reused for another area, when the latter area is determined to be equivalent to the former area for OPC purposes." The Examiner is puzzled by Applicants arguments with respect to this section since clearly Cobb is disclosing that following simulation the resultant model is corrected. It is unclear where a functional or patentable distinction lies since the resultant of Cobbs is explicitly corrected and would therefore avoid the necessity of having to re-perform the simulation which follows Applicants claimed invention in which an equivalence determination is made to avoid the necessity of having to re-perform the simulations from scratch.



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